

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 47 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

RAIPUR MFG. CO. LTD.

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Appearance:

MR M.J. THAKORE, instructed by  
MR MANISH R BHATT for Petitioner  
SERVED BY RPAD for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

Date of decision: 05/02/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred for the opinion of this Court the following two questions under Section 256(1) of the Income Tax Act.

1. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that for the purpose of Section 40(c) of the Income Tax Act, 1961, the reimbursement of medical expenses to the Managing Director would not form part of remuneration or benefit or amenity to the Managing Director concerned?"

2. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that for the purpose of Section 40-A(5) of the Income Tax Act, 1961 the amount of cash payment of House Rent Allowance to the employees by the company would not form part of the salary of the concerned employee?"

The question No.1 is squarely covered by the earlier opinion of this Court in Gujarat Steel Tubes Ltd. Vs. CIT, reported in 210 ITR 358 in which it was held that reimbursement of medical expenses incurred by the Directors is a benefit to a Director within the meaning of Section 40(c)(i) of the Act. Applying this ratio, the question No.1 is answered in the negative in favour of the revenue and against the assessee.

As regards the question No.2, the matter is squarely covered by our decision rendered today, in the case of CIT Vs. Saraspur Mills Ltd. - ITR No.27/84, in which it is held that the amount of cash payment of house rent allowance to the employee by the company would form part of the salary of the employee for the reasons given in that decision. We therefore, answer the question No.2 in the negative in favour of the revenue and against the assessee. The reference stands disposed of accordingly with no order as to costs.

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